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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,516	11/10/2000	Gerald R. Koefeldt	RPC-0485-PUS	5124
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KONSTANTINE J. DIAMOND 4010 E. 26TH STREET LOS ANGELES, CA 90023				
			EXAMINER CASTELLANO, STEPHEN J	
			ART UNIT 3727	PAPER NUMBER 17
DATE MAILED: 01/29/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/710,516

Applicant(s)

KOEFLDA ET AL.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17, 19-21, 23-26 and 29-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17, 19-21, 23-26 and 29-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-17, 19, 25 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "the container portion" on page 5, line 7. There is insufficient antecedent basis for this limitation in the claim because it can't be determined if the central container portion or a lower (container) portion is meant.

Claim 26 recites the limitation "the corner of the container" in line 2. It can't be determined if the container (a bottle) has corners and why the standoff would be disposed in this corner.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 7-13, 15, 17, 19, 25, 26 and 29-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Sauey.

Sauey discloses a crate capable of holding a beverage container, the beverage container having a lower portion and a central label area, the crate comprising a unitary bottom panel, first and second pairs of opposing side walls and a divider assembly having longitudinal and transverse divider members (dividers) and a plurality of low profile standoff portions (standoffs), each of the standoffs having a container contact surface spaced from the corresponding dividers .

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauey in view of Koefeldä.

Sauey discloses the invention except for the hinged lid. Koefeldä teaches a hinged lid with a lid (bottle cap) capture area sized to receive an upper portion of a respective container (bottle) for aligning the container (bottle). It would have been obvious to provide the hinged lid with a lid capture area in order to properly align the items within the crate to keep the items covered, in alignment with each other so that adjacent items do not impact or rub each other and to prevent top damage from occurring to the items.

Claims 4, 6, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauey in view of Koefeldä and Apps ('814)(Apps).

Sauey discloses the invention except for the hinged lid. Koefeldä teaches a hinged lid with a lid (bottle cap) capture area sized to receive an upper portion of a respective container (bottle) for aligning the container (bottle). Apps teaches a lid with an outer surface with projections, the projections provide inside surface recesses for the upper portion of bottles stored therein and the projections are received in the crate bottom recesses of a identical crate stacked thereabove. It would have been obvious to provide the hinged lid with lid capture areas (recesses) and for the outer surfaces of the lid capture areas to form projections which are received in the recesses of a crate bottom stacked thereabove in order to properly align the items

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within the crate in to keep the items covered thereby reducing contamination and deterioration from light, in alignment with each other so that adjacent items do not impact or rub each other and to prevent top damage from occurring to the items.

Claims 1-3, 5, 7-13, 15, 17, 19, 25, 26 and 29-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps in view of Sauey and Hepp.

Apps discloses the crate including the divider assembly having dividers (dividing walls 116, 216) and standoff portions (standoffs) (formed by support areas 122 with a raised circular rib, a longitudinal rib and a transverse rib). Apps discloses the invention except the standoffs being generally transverse to the upper surface of the bottom panel. Sauey and Hepp disclose standoffs which are generally transverse to the upper surface of the bottom panel and Sauey discloses a standoff being substantially shorter than the dividers. It would have been obvious to replace the standoffs of Apps or add additional standoffs as taught by Sauey and Hepp to provide a more effective securement or to further secure the position of the items stored in the crate as the Sauey and Hepp standoffs provide a more stable securement by engaging several parts of the sidewall of the items to be stored which resists transverse movement of the sidewall better than engaging the end wall.

Claims 1-5, 7-15, 17, 19, 20, 23-26 and 29-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gale in view of Apps, Sauey and Hepp.

Gale discloses a crate for holding a beverage container, the crate comprising a unitary bottom panel (minor flaps 21, 22 and inserts 81, 82) having an upper surface (the upper surfaces of both inserts), sidewalls (SIDE 1, SIDE 2, END 1 and END 2) and a divider assembly having a plurality of divider members (formed by portions of the upper surface of inserts 81 and 82

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located outside of and extending between the major wells (91) and the upwardly extending sidewall portions of the wells) attached to the upper surface of the bottom panel and extending longitudinally and transversely in the compartment area to define at least one container receiving area for receiving the beverage container therein, the divider assembly including a plurality of low profile standoff portions (cylindrical rib 96) having a container contact surface (inside surface, outside surface or upper edge surface) spaced from corresponding divider members, the standoff portions extending inwardly into the at least one container receiving area for engaging the lower portion of the container to provide stability thereto and for maintaining the corresponding beverage container in a spaced relationship from the divider members.

The minor flaps 21 and 22 are secured to the inserts 81 and 82, respectively (see column 4, lines 24 and 25) and the minor flaps 21 and 22 are indirectly secured to each other by being attached to the sidewalls by fold lines 46, 47 (see column 3, lines 43-46). The bottom panel is unitary. The bottom panel and the first and second pairs of side walls form a unitary construction.

Gale discloses the invention except for the bottom panel, sidewalls and divider assembly being integrally molded as one piece. Apps, Sauey and Hepp disclose integrally molded as one piece structures including the bottom panel, sidewalls and divider assembly. It would have been obvious to modify the construction to be integrally molded as one piece in order to save manufacturing costs associated with the assembly of separate parts and to eliminate the misplacement of parts.

Re claims 5 and 15, the insert 81 has recesses (opposite rib 98, see Fig. 7), each recess is capable of receiving a projection.

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Re claim 10, the container receiving area can be more than a single bottle receiving area and can include four bottle receiving areas, so four standoffs extend within at least one container receiving area.

Re claim 24, Gale doesn't disclose a lid projection and receiving area. Apps teaches a lid projection and receiving area. It would have been obvious to add the lid projection and receiving area to provide stability to a vertically stacked array of crates to prevent toppling of the stack.

Claims 20 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps in view of Gale, Koefeld, Sauey and Hepp.

Apps discloses the invention except for the hinged lid. Gale and Koefeld teach hinged lids. It would have been obvious to add a hinge to the lid to keep the lid attached so that it doesn't become separated from the crate and to provide an alignment feature for the recesses on the underside of the lid to keep the items stored within the crate properly aligned to prevent damage from rubbing or damage to the top of the item stored.

In addition, Sauey and Hepp disclose standoffs which are generally transverse to the upper surface of the bottom panel and Sauey discloses a standoff being substantially shorter than the dividers. It would have been obvious to replace the standoffs of Apps or add additional standoffs as taught by Sauey and Hepp to provide a more effective securement or to further secure the position of the items stored in the crate as the Sauey and Hepp standoffs provide a more stable securement by engaging several parts of the sidewall of the items to be stored which resists transverse movement of the sidewall better than engaging the end wall.

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Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over [Apps in view of Gale, Sauey and Hepp] or [Gale in view of Apps, Sauey and Hepp] as applied to claim 20 above, and further in view of Jamison.

The combinations discloses the invention except for the lid lock. Jamison teaches a lid lock. It would have been obvious to lock the lid to prevent unauthorized access to the contents of the crate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc